IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

COURT RECEIVER'S REPORT NO.125 OF 2006
IN
ARBITRATION PETITION NO.470 OF 2002

Lalitkumar V. Sanghavi. ...Petitioner.
Vs.
Dharamdas Vanmalidas Sanghavi & Ors. ... Respondents.

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Mr.Sanjay Jain i/b. M/s.DSK Legal for the Petitioner.
Mr. D.S. Chandanani for Respondent No.1.
Mr.D. V. Deokar, 1st Assistant to Court Receiver.

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CORAM : DR.D.Y.CHANDRACHUD, J.

November 17, 2006.

P.C.

Before considering the prayers in the Report of the Court Receiver, it would be appropriate if notice is directed to be issued to the occupants at Serial Nos.32 to 56 mentioned in prayer clause (a). The Receiver shall accordingly issue a notice returnable on 14th December 2006.

2. The Receiver shall similarly issue a notice to M/s.A. Aziz & Brothers, returnable on 14th December 2006.

3. In so far as prayer clause (e) is concerned, the Court Receiver is permitted to take action in accordance with law.

4. Prayer clause (c) in the Report of the Court Receiver is for directions to the following effect:

> "That the Respondent No.1 be directed to hand over possession of the office premises of the suit firm situate at 41, Bapubhai Vashi Road, 312 Vallabh Bhuvan, Vile Parle (West), Mumbai within the time stipulated by this Hon'ble Court and in the event of his refusal to hand over the possession within the time stipulated by this Hon'ble Court, the Receiver be directed to take the possession with the help of Police by breaking open lock and also from whomsoever found in possession;"

5. An order was passed on 31st October 2002 in terms of prayer clause (a) of the Arbitration Petition which reads as follows :

> "(a) This Hon'ble Court be pleased to appoint the Court Receiver, High Court, Mumbai or any other fit or proper person as receiver of the assets and properties of the said firm i.e. M/s.Sanghavi Brothers including the subject property more particularly described in Exhibit 'A' to the Petition and the structures standing thereon, books of accounts, bank accounts, etc., with all powers under Order XL, Rule 1 of the Code of Civil Procedure, 1908 including the power to file suit and to:
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> -i. Collect rent/compensation from the occupants/ tenants on the subject property more particularly described in Exhibit 'A' to the Petition;

> -ii. Pay the amounts collected by way of rent/compensation towards the outgoings in respect of the subject property more particularly described in Exhibit 'A' to the Petition including but not limited to the lease rent, property taxes , water charges etc;"

Exhibit 'A' to the Arbitration Petition contains a list of two properties, namely:

> "1. All that piece or parcel of land, or ground with all messuages tenement and building and sheds standing thereon bearing Plot No.240, Town Planning Scheme II, Vile Parle House No.55-A to 56 admeasuring 3430 Sq.Yds. or thereabouts situate lying and being at Vile Parle.
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> -2. The office premises of M/s.Sanghvi Brothers situated at 41 Bapubhai Vashi Road, (312 Vallabh Bhuvan, 20 Bapubhai Vashi Road) Vile Parle (West), Mumbai-400 056."

6. The order of this Court dated 31st October 2002 was confirmed in appeal by the Division Bench on 11th December 2002. A Special Leave Petition against the order came to be dismissed on 10th March 2003. A praecipe was moved before the Court on 4th December 2002, based on a judgment of the Hon'ble Mrs.Justice Baam dated 22nd June 1999 in Suit No.255 of 1972. On the basis of the judgment of the Learned Single Judge, it was

submitted in the praecipe that the Receiver would stand appointed in respect of the leasehold rights of the partnership. On the praecipe it was clarified by the Court by consent that the Receiver who had been appointed by the order of the Court dated 31st October 2002 was in respect of the leasehold rights of the partnership firm in the property in question. It is stated that the praecipe was in respect of the property listed at Serial No.1 of Exhibit 'A' to the Arbitration Petition, since it was the contention of the Respondent to the Arbitration Petition that the partnership firm only held leasehold rights in respect of the property listed at Serial No.1. In fact, subsequently on 3rd February 2003, a further praecipe was sought to be moved in respect of the property at Serial No.2, namely, at 312, Vallabh Bhuvan. No order was passed on the said praecipe.

7. In these circumstances, it is abundantly clear that the Court Receiver has been appointed as Receiver in respect of the leasehold interest of the partnership in respect of the property at Serial No.1 at Exhibit 'A' to the Arbitration Petition and the property mentioned at Serial No.2 of the said Exhibit. After the appeal came to be dismissed by the Division Bench and the Special Leave

Petition was also dismissed, the Respondent to the Arbitration Petition moved an Interim Petition for setting aside the order dated 31st October 2002 which was dismissed on 26th July 2006. An appeal against the order of the Learned Single Judge was also dismissed by a Division Bench on 6th November 2006. During the course of the hearing of the Report of the Receiver, I had sought a clarification from Counsel for the Respondent to the Arbitration Petition on whether a defence was taken to the effect that the property at Serial No.2 did not form part of the assets of the partnership. Fairly no such ground has been pointed out to the Court. In that view of the matter, the Court Receiver, in terms of the order of the Court which has been confirmed in appeal, shall have to take necessary steps to implement the order of the Court and there shall be accordingly an order in terms of prayer clause (c) of the Report. Learned Counsel for the First Respondent submitted that at present the Receiver may be directed to take symbolic possession since the First Respondent can apply for being appointed as agent of the Receiver in the Arbitration Petition. Parties are closely related. Hence, in my view it would be appropriate to direct that at present, the Receiver shall take symbolic possession. The First Respondent shall have a period of

six weeks to apply for relief before the Court in the Arbitration Petition. In the event that no order is passed within a period of six weeks, the Receiver shall then take possession, as prayed in prayer clause (c).

8. In so far as prayer clause (f) is concerned, the Receiver is by consent permitted to pay the taxes out of the money held by him.

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